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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees	)))))	WT Docket No. 97-82

COMMENTS IN SUPPORT OF, AND OPPOSITION TO, PETITIONS FOR RECONSIDERATION

Third Kentucky PCS (Third Kentucky) respectfully submits these comments in the above-captioned proceeding.[1]

Third Kentucky is the C block licensee for the Corbin, KY market and the F block licensee for Corbin, Somerset and Middlesboro-Harlin markets and the surrounding rural areas. We are determined on offering high quality, economical digital wireless services to this mainly rural area of Kentucky. As president and sole owner of Third Kentucky, I presently employ ten people with plans on growing my business as we become operational. We believe the four alternatives for restructuring of the payment terms offered to the C block licensees were simply punitive and did not seem grounded in the FCC's paramount public interest goal of bringing competitive services to the public.

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[1] Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licenses, Second Report and Order, WT Docket No. 97-82, FCC 97-342, rel. Oct. 16, 1997 ("*Restructuring Order*").

Introduction

We have carefully reviewed the Petitions for Reconsideration filed in this proceeding. We note that with the exception of a few companies, most petitioners believe that the FCC's restructuring decision does not provide licensees with a commercially reasonable solution to bankruptcy.

We believe the Commission should modestly adjust the terms of the Disaggregation and Prepayment options to allow full use of the licensees' down payment. Furthermore, under the Prepayment option, licensees should be afforded the opportunity to purchase licenses at the net present value of the net high bid, using a discount rate of at least 15%.

Finally, given that any modification will materially affect the menu option that a licensee selects, the Commission should postpone the election deadline from January 15, 1998 to March 15, 1998, as proposed by Horizon Personal Communications, Inc.[2]

Competition Will Suffer Without a Modest Modification of the *Restructuring Order*

After the *Restructuring Order* was released, General Wireless, Inc., the nation's third largest C-Block licensee, sought Chapter 11 bankruptcy protection. Today, C-Block licenses covering one-third of the population of the U.S. are held by companies in bankruptcy proceedings. We fear that without a financially viable restructuring alternative, more C-Block licensees will seek Chapter 11 bankruptcy, significantly delaying the construction of the networks that will provide real, facilities-based competition sought by Congress and the FCC.

Unfortunately, the delay in new C-Block competition comes at a time when consumers can least afford it. According to *The Wall Street Journal*, AT&T Wireless recently has decided to shift its focus away from the mass-market consumer to "big-spending corporate cellular-phone users." Daniel R. Hesse, the chief executive of AT&T's wireless unit, said his group "will pay a slight penalty in subscriber and revenue growth for a short period of time as we become more selective about the subscribers we bring on board."[3] C-Block licensees promise to offer an array of affordably priced, new wireless services to <u>all</u> consumers, not just the ones with deep pockets.

In the local and long-distance markets, the delay in new competition is even more troubling. According to a cover page story on December 15, 1997 in *The Wall Street Journal*:

> Almost two years after passage of a landmark law abolishing the barriers between long-distance providers and local-exchange monopolies, new competition has failed to emerge. The Bells and GTE Corp. still control most local phone service. The Big Three [long-distance carriers] still hold more than 80% of the long-distance market. Consumers still haven't seen the benefits deregulation promised – and at this rate they may not for years to come.[4]

These same incumbents have a choke hold on the wireless industry. The top three wireless licensees – AT&T, Sprint, and PCS PrimeCo – are all large, incumbent wireline providers. These three companies control nearly half of the available POPs in the U.S. Given such significant industry concentration, and the high per-minute airtime charges that such companies demand, it is not surprising that wireless services have become a luxury in this country.

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[2] *See* Comments of Horizon Personal Communications, Inc., WT Docket 97-82, (November 24, 1997) at p. 1.

[3] *See* Stephanie N. Mehta, *AT&T Wireless Expects Slower Growth As It Shifts Focus to Corporate Users, The Wall Street Journal*, p. A4, (December 18, 1997).

[4] *See* Leslie Cauley, *Open and Closed; Genuine Competition in Local Phone Service is a Long Distance* off, *The Wall Street Journal*, p. A1, (December 15, 1997).

C-Block licensees are ready today to build competitive wireless networks, and begin providing the competition that Congress and the FCC envisioned. However, without modest modifications to the *Restructuring Order*, consumers will be denied all of the key public policy benefits that competition promises to deliver.

Conclusion

Modest modifications to the FCC's *Restructuring Order* are necessary to promote new competition and avert new bankruptcy filings. The modifications suggested are commercially reasonable, will foster facilities-based competition, and will provide consumers, perhaps for the first time, with new, affordably priced wireless services.

Respectfully Submitted,

Thomas G. Ward
President
Third Kentucky Cellular

Open and Closed

Genuine Competition In Local Phone Service Is a Long Distance Off

To Understand Why, a Visit To South Carolina Helps; It's a Very Ugly Battle

'The Dog Ate My Homework'

By LESLIE CAULEY
Staff Reporter of THE WALL STREET JOURNAL

FAIR PLAY, S.C. – At the Fair Play Supermarket, a customer can buy any number of necessities, from hair curlers to night crawlers. If the right product isn't available at the right price, there's always Holly's, a quarter-mile down Fair Play Boulevard, or Russell's, just around the bend. And that, says Fair Play Supermarket owner Durham Clayborn, is the beauty of competition.

"If I was the only store in Fair Play, I could just put any price on anything," Mr. Clayborn says. "When you have competition, you can't do that."

But he and his neighbors in this town of 300 have no choice when it comes to picking a local phone company, and for long-distance service, most residents still rely on one of the Big Three: AT&T, MCI or Sprint. Sweeping deregulation of the phone business was supposed to change all that – but it hasn't.

Almost two years after passage of a landmark law abolishing the barriers between long-distance providers and local-phone monopolies, new competition has failed to emerge. The Bells and GTE Corp. still control most local phone service. The Big Three still hold more than 80% of the long-distance market. Consumers still haven't seen the benefits deregulation promised – and at this rate they may not for years to come.

Regulatory Rejection

That disappointing prospect became increasingly clear last week as federal regulators gave another thumbs-down sign to the notion of letting a Baby Bell get into the long-distance business. The Federal Communications Commission had previously rejected two Bell requests, and on Wednesday, lawyers at the Justice Department recommended that the FCC turn down yet another – BellSouth Corp.'s push to provide long-distance service in Louisiana. BellSouth is farther along in a request to do the same thing in South Carolina, and that effort now seems all but certain to be rejected by the FCC by the end of this month.

The clouded outlook for new competition is due in part to the main result of the Telecommunications Act of 1996 – merger mania that has racked up close to $100 billion in deals so far, including MCI Communications Corp.'s agreement last month to be acquired by WorldCom Inc. for $37 billion in cash and stock, the largest takeover ever. Of the original seven Baby Bells, five remain, and AT&T Corp., Sprint Corp. and GTE could end up seeking mates, too.

But the lack of competition also has a lot to do with the terms of the Telecom Act itself, which turns on a quid pro quo: Only after the Bells and other local phone companies welcome rivals into local service for residential customers will they be allowed to offer long-distance service.

That poses a key question: What should happen if a Bell opens up a market, but no rival bothers to come in? BellSouth, aiming to test this quandary, targeted South Carolina first. Its likely failure here offers an illuminating lesson about why deregulation has brought local and long-distance companies to a standoff, at the expense of competition.

BellSouth knew well that the state was a market that few rivals would be eager to invade. South Carolina isn't exactly teeming with new telecom opportunities. It has 3.7 million people and 2.1 million phone lines – compared with 2.4 million lines in Manhattan alone. No wonder, then, that BellSouth has signed agreements dictating the terms by which several dozen competitors can offer local service in South Carolina, yet none of them have done so.

Relative Costs

Congress imposed its quid pro quo with good reason. Would-be rivals can't afford to build local networks from scratch. Consider: Long-distance companies' networks cost a total of about $55 billion to build and span 100,000 miles of digital tentacles, while the Bells' local networks cost $300 billion and cover about four million miles of wire.

The trouble is, the Telecom Act sets a high bar for the Bells and other locals to prove that they have opened their local markets. Among other things, the law has a 14-point "competitive checklist" requiring that new competitors provide residential service, as well as the more-profitable business service, and that they not merely resell Bell service – as AT&T does for about 400,000 households in six states – but provide "facilities-based" service, owning or leasing its own local gear.

If the checklist wasn't daunting enough, the FCC has since issued a 742-page order to implement it. The order dictates, in great detail, how the Bells should proceed, including the discounts they must grant to competitors, and hundreds of other points.

All of which has thrust the Bells and the long-distance giants into a rancorous standoff, sparring over semantics. What constitutes "real" competition? What is a truly "open" market? The result has been protracted court battles, regulatory paral-

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Why Phone Competition Is Still on Hold

Continued From First Page

ysis, lots of finger-pointing, and even more lip service to the goal of competition.

AT&T, MCI and Sprint have signed agreements with various Bells to offer residential service in dozens of states, but have made only minimal efforts to actually do so in a handful of those markets. None of the three can say for sure when they might begin offering full-scale local service anywhere, and they blame the Bells for the holdup. "We're doing everything we can to open up the local markets to competition—and the Bells are doing everything they can to slow it down," says Steve Davis, an AT&T vice president.

The Bells, for their part, complain that the long-distance Big Three are resisting taking the plunge into local service because the longer they wait, the longer they can block the Bells from entering the long-distance business, where they could easily cut some rates by 25% or more. The Big Three "are always trying to blame their problems on everybody else," says Neil Cox, a division president at Ameritech Corp., the Chicago-based Bell. "It's like saying the dog ate my homework."

Much the same bickering has been raging in South Carolina, one of nine states served by Atlanta-based BellSouth. The Bell swung into action within weeks after the Telecom Act became law on Feb. 8, 1996. It worked with state regulators to devise charges for the "loops," "ports" and switches that rivals would need to launch local service. It set up new ordering systems and training sessions for rivals. And it even cleared out floor space in its switching centers to make room for competitors' equipment.

Court Challenge

Meanwhile, it began negotiating dozens of "interconnection" agreements with would-be local providers, complex pacts that spell out the prices, terms and conditions under which rivals may link up to local networks.

Then on Aug. 8 of last year, the FCC issued its order enforcing the 14-point checklist. BellSouth challenged the FCC's pricing requirements in federal court a few weeks later, as did other Bells and GTE, which has local networks in 28 states. State regulators in South Carolina and several other states sued, too, attacking the FCC edict as an illegal infringement on their oversight authority, which includes the setting of phone rates.

The separate challenges were consolidated in the Eighth Circuit Court of Appeals in St. Louis, and on Sept. 27, 1996, the court surprised the industry by granting a stay of the FCC's order. There was an immediate chain reaction: The Bells, by then deep in "interconnection" talks with rivals, immediately balked at offering the FCC-set prices that were more favorable to the long-distance companies. The Bells reasoned that the agency's pricing order was about to get thrown out by the court, so why bother?

But long-distance companies, still hopeful that the FCC's rules would ultimately be upheld by the court, argued that the Bells should follow the FCC's pricing guidelines despite the stay. As both sides dug in their heels, each began to accuse the other of not obeying the law.

BellSouth moved forward in the meantime, signing more interconnection agreements in South Carolina and across its nine-state region, to show it was working to open local markets. (Contracts signed during that period generally didn't include final pricing, pending what the federal appeals court would do.) The Bell had struck almost 40 deals in the state by the first quarter of this year, and it eventually signed statewide pacts with AT&T and MCI and with dozens of tiny local carriers. A deal with Sprint is pending.

But no rival ever followed up and started competing for local residential service. The three long-distance giants "won't come – they're more interested in keeping us out of long-distance," contends Joe Anderson, president of BellSouth's operations in the state. AT&T counters that BellSouth's high prices and unaccommodating approach are to blame.

April 1 this year, BellSouth raised the stakes, asking South Carolina regulators to endorse the idea of letting it provide long-distance service to residents in the state.

Local Boundaries

The Baby Bell would be well-equipped to do so immediately. Its wires crisscross all of South Carolina, yet it is allowed to handle only calls that begin and end within one of four local calling areas in the state. This can get a little silly: BellSouth isn't allowed to route a call from Whitmire to Carlisle—just 11 miles away—because the two towns are divided by a court-set local boundary, and that makes it a long-distance call. Instead, BellSouth must hand the call off to a long-distance carrier and then pick it back up for final delivery. This adds to the cost. About 37 cents of every dollar a long-distance company charges goes to a Bell as an "access fee."

BellSouth hoped to gain support for its long-distance bid by arguing that by opening its local network to potential rivals, it should be allowed to enter the long-distance business. The new law lets a Bell get into the long-distance business, even if competition hasn't emerged at the local level, so long as the Bell can prove its local markets are open and that rivals simply decided against showing up.

But AT&T had pre-empted this BellSouth gambit. Within days after deregulation passed, AT&T had filed applications to offer new local service in all 50 states, although it didn't have the networks to do so. By showing at least a passing interest in competing locally, AT&T made it more difficult for BellSouth to argue that no one was interested in doing business in South Carolina. An AT&T spokesman acknowledges this result, but says that wasn't the company's overriding intent.

In early July, the South Carolina Public Service Commission opened four days of hearings on whether BellSouth's local market was "open" enough to grant it entry into long-distance. (Although states don't implement the Telecom Act, they do assess whether a Bell has met the federal checklist and make a recommendation to the FCC on whether a Bell should be permitted to offer long-distance service.)

BellSouth argued that it had done everything possible to open its local networks to reluctant rivals. AT&T and others countered that the Bell was thwarting competition by trying to charge rivals exorbitant prices in excess of what was allowed by the FCC. For example, BellSouth proposed giving competitors a 15% discount off retail rates to let them resell local service, but the FCC order demanded discounts of 17% to 22%. Never mind that the federal appeals court had suspended the FCC order to review its constitutionality and other issues.

The South Carolina commission began to side with BellSouth once it asked would-be rivals to specify when they would actually begin offering residential service. No one had much of an answer.

"The switches are expensive, and it takes manpower to do the implementation process. We have limited resources," testified James Falvey, an executive with ACSI Inc., an Annapolis Junction, Md., carrier. ACSI serves business customers and has said it may someday offer residential service, but Mr. Falvey told the commission that won't happen "for the foreseeable future."

AT&T, in essence, advised the state to be patient: "It took the Bell operating companies 100 years to achieve the present state of the network, and the commission should not expect entrants to deploy comparable networks overnight."

The state panel concluded the hearings on July 10, and eight days later the Eighth Circuit Court of Appeals all but dismantled the FCC's order. The court threw out key provisions, saying the FCC lacked any authority to dictate pricing to the Bells, and ruled that such oversight belongs to the states. (The FCC has since filed an appeal to the U.S. Supreme Court.)

"I think we just got back in the ballgame," Sidney Boren, a BellSouth executive vice president, said at the time.

'More Choices'

In late July, BellSouth won another round, when South Carolina's Public Service Commission voted 7-0 to support the company's push to get into the long-distance business. The commission ruled that BellSouth had done all that was required to open its local networks, but "none of [BellSouth's] potential competitors are taking any reasonable steps" toward offering local service.

In the state commission's hearings, one expert had testified that long-distance rates could drop 25% within a year after BellSouth gains entry into the market. Let BellSouth begin offering long-distance service, South Carolina regulators reasoned, and that might prod AT&T and others to counter with new local service in the state, producing "more choices for consumers."

"That's why we did what we did," says state commissioner Dukes Scott. "This wasn't a motion for BellSouth. It was a motion for the residents of South Carolina."

The state ruling, however, was still merely an advisory opinion. Even though the federal court had thrown out the FCC order, that agency still retains final say over any Bell entry into long-distance service. On Sept. 30, buoyed by the state's support, BellSouth formally requested FCC permission to start handling long-distance calls for South Carolina customers. The Bell urged businesses in the state to write to the FCC and urge approval of the long-distance request.

A BMW auto plant happily obliged. The plant, which makes the Z-3 Roadster in Spartanburg, runs a monthly phone bill of $50,000, but no single vendor offers a discounted bundle of local and long-distance services. "Competition would result in a number of advantages for customers – better prices, better services and better technology," says Bobby Hitt, the BMW plant's public-relations manager.

The FCC must rule on BellSouth's South Carolina request by Dec. 29. The prospects don't look good. In November, the Justice Department's antitrust division recommended that the FCC reject BellSouth's request, calling it "premature." The Justice officials said BellSouth had failed to "prove that its current and future prices" to rivals would permit "effective" competition. As for BellSouth's claim that local competition hadn't emerged because rivals weren't interested, the antitrust experts said they didn't have enough information to form an opinion.

Publicly, BellSouth is hopeful of gaining the FCC's blessing. But some executives are clearly frustrated. "We should not be held hostage to the business strategies" of AT&T and other rivals, fumes Joe Anderson, president of BellSouth's South Carolina operations. "It's unfair to us, and unfair to our customers."

AT&T Wireless Expects Slower Growth As It Shifts Its Focus to Corporate Users

The Wall Street Journal
12/8/97
page A4

By STEPHANIE N. MEHTA
Staff Reporter of THE WALL STREET JOURNAL

AT&T Wireless Services, the nation's largest wireless phone operator, is expecting a slowdown in growth as it shifts its focus to big-spending corporate cellular-phone users.

Faced with increasing competition from new wireless carriers such as Sprint Corp.'s Sprint PCS unit and Nextel Communications Inc., the AT&T Corp. wireless unit is turning its attention to the highly profitable business user. AT&T is promoting aggressively its "wireless office" product for corporate campuses and plans to move 20% of its work force into AT&T's larger business-services division to boost wireless sales to companies. Last month, the carrier said it is exploring plans to shed its lower-margin paging operation.

The strategy will come at a cost. In an interview, Daniel R. Hesse, chief executive officer of the wireless unit, said the group "will pay a slight penalty in subscriber and revenue growth for a short period of time as we become more selective about the subscribers we bring on board."

Mr. Hesse said he expects the wireless unit to post 1997 revenue "north of $4 billion." In 1996 the unit reported revenue of $3.48 billion, up 19% from a year earlier.

Dominance Expected to Continue

Analysts said AT&T will continue to be the dominant wireless player by virtue of its size, marketing prowess and ability to bundle cellular service with long-distance and other services. When the company bought McCaw Cellular Communications Inc. for $11.5 billion in 1994, it acquired a national cellular system with millions of existing customers. Today the carrier has some 7.8 million subscribers. But competitors said AT&T has been slow to build systems to offer high-frequency digital service. By the end of the year, AT&T will offer service at the 1,900-megahertz frequency in 10 markets. Sprint PCS said it offers such service in 40 of the top 50 markets; PrimeCo Personal Communications, a PCS carrier owned by two Baby Bells and AirTouch Communications Inc., said it offers service in 20 markets; Nextel, which offers a low-frequency digital service aimed at businesses, said it operates in 75 markets. AT&T will not say how many new markets it plans to enter in 1998.

At the same time, AT&T experienced quality problems with its low-frequency digital service, offered in cities such as New York and Dallas. "It sounds like you've got marbles in your mouth," one customer recently complained.

Mr. Hesse conceded that the carrier initially experienced sound-quality problems and has moved to fix them. It nearly has completed a national upgrade of service that will improve sound. One catch: The upgrade works only on phones that have been shipped in the last several months with a special voice encoder that improves sound quality. And AT&T said it hasn't decided on whether it will allow its existing digital-service customers to get upgraded phones at a discount.

But Mr. Hesse said he does not believe the carrier has moved slowly in building out its digital markets. Besides the 10 high-frequency markets, AT&T offers lower-frequency digital service in an additional 122 markets, giving the carrier almost 1.5 million digital subscribers. Mr. Hesse said. "If you look at our competitors, they're entering all these markets for the first time," Mr. Hesse said. "We already have enormous market presence."

Wireless Local Loop

Other questions remain for the wireless unit. Mr. Hesse said the group continues to test wireless local loop, a system for offering local telephone service via antennas and receivers mounted on the sides of homes instead of through traditional copper wires. The company is testing such a product with employees in Chicago, and Mr. Hesse said AT&T plans other tests, including possibly another neighborhood trial and a test on a college campus.

AT&T continues to be reticent about its plans to enter the $105 billion local-phone market by using its wireless system to connect homes and businesses directly to the AT&T long-distance network. Since the arrival of new chief Michael Armstrong, AT&T is looking at a number of ways to invade the Baby Bells' territories — and using a wireless unit that can be placed on the side of customers' premises is one option under consideration.

First AT&T will have to figure out how to deploy the system inexpensively. Tests planned for the Chicago area next year should tell AT&T what its costs would be using the network. Currently, "the wireless local loop business does not appear to be justified by the capital expenditures to get into it," noted John Bensche, a wireless analyst for Lehman Brothers.

Even as Mr. Hesse, a 20-year AT&T veteran, tries to further integrate wireless services into the AT&T mainstream, the unit has displayed a little entrepreneurial edginess. Last year, the wireless unit stunned many in the industry by marketing its low-frequency digital wireless service as "digital PCS," a term previously reserved for higher-frequency, 1,900-mhz service.

"It was quite a marketing coup" on AT&T's part to beat its rivals to market, said Steven Yanis, a telecommunications analyst at BancAmerica Robertson Stephens. "Many people don't know what PCS is, but they think it is better."